

BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION
STATE OF NEBRASKA

Douglas D. Christensen)
Commissioner of Education)
301 Centennial Mall South - 6th Floor)
P.O. Box 94933)
Lincoln, NE 68509-4933)

Petitioner,)

vs.)

Harold Jones)
1108 Picotte Street)
Yankton, SD 57078,)

Respondent.)

N.P.P.C. Case No. 008

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER OF THE
COMMISSION



I. STATEMENT OF THE CASE

This case commenced before the Nebraska Professional Practices Commission, hereinafter referred to as the "Commission," with the filing of a Petition on May 24, 2000, by Douglas D. Christensen, Commissioner of Education, Department of Education, State of Nebraska, hereinafter referred to as "Petitioner." The Petition was filed against Harold Jones, hereinafter referred to as "Respondent." The Petitioner alleges certain acts of conduct by the Respondent in violation Neb. Rev. Stat. Sec. 79-866(2) (Reissue 1996) and of Title 92, Nebraska administrative Code, Chapter 27, Sections 004.02F and 004.04E (effective date: December 25, 1989),

On May 24, 2000, the Petition, Notice of Right to Submit and Answer, and a copy of Title 95, Nebraska Administrative Code, Chapter 1, were served upon the Respondent by certified mail, return receipt requested. On June 12, 2000, the Respondent, through his attorney, Scott Norby, filed an Answer with the Commission.

On June 19, 2000, Kathi Vontz, Clerk of the Commission, sent a notice of hearing to all parties. The Notice advised that a public hearing on the Petition and Answer would be held on the twelfth day of July, 2000, at approximately 1:30 p.m., in the State Board Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The Notice further advised that the hearing would be held before a designated hearing committee

of the Commission with Samuel Van Pelt serving as legal counsel to advise the Chair in the performance of his duties.

At the above time and place, the Petition and Answer came on for hearing before a Hearing Committee of the Commission consisting of Commissioners Vickie Anderson, Rose Mary Datus, John Garske, Kurt Harrison, Mimi Heintzman, Ken Heinz, Linda Salazar, Tim Shafer, Catherine Simon, and Leann Widhalm. Kurt Harrison served as Chairperson of the hearing panel. The proceedings were reported by Kelly Horsley of General Reporting Services, Lincoln, Nebraska. The Petitioner was present by Brian L. Halstead, his attorney and Certification Counsel. The Respondent appeared in person and through his attorney, Scott J. Norby. Exhibits were received and witnesses testified. Thereafter attorneys for both parties made their closing arguments. Thereupon, the Commission adjourned and deliberated. Accordingly, the Commission makes the following Findings of Fact, Conclusions of Law, and Recommendation.

II. FINDINGS OF FACT

1. The Petitioner, Douglas D. Christensen, is the Commissioner of Education for the State of Nebraska. The Respondent holds a Nebraska public schools teaching certificate, number -8247, Type 2, Rank B, Level 7, endorsed in Physical Education K-12, with an expiration date of August 31, 2003.

2. At all times relevant herein, the respondent was employed as a reading and physical education teacher by the Santee Community Schools and has been so employed in excess of twenty years. While so employed, on or about October 18, 1999, the Respondent touched the hair of Alexis Campbell, a fellow teacher and employee of the Santee Community Schools, and also put his face near her neck and smelled her hair. After doing so, he asked Campbell if she was one to "kiss and tell." Respondent's conduct made Campbell feel uncomfortable.

3. In May of 1995, the Respondent approached Jill Stark in her empty classroom while she was playing music and asked her to dance a slow dance with him. Respondent's conduct made Stark feel uncomfortable. In September of 1999, the Respondent took the hand of Sheri Plumtree, a co-employee, kissed her hand and said, "Honey, if there's anything else I can do, just let me know."

III. DISCUSSION

The Commission members hearing this case are unanimously of the opinion that the Petitioner has failed to prove by a preponderance of the evidence that the above-referenced conduct constituted the commission of an immoral act or conviction of a felony under Neb. Rev. Stat Sec. 79-866(2) (Reissue 1996.) The Commission members are unanimously of the opinion that the Petitioner failed to prove by a preponderance of the evidence that the above conduct violated Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04E (effective date: December 25, 1989) by constituting an act of moral turpitude or commission of a felony. Commission members are unanimously of the opinion that the Respondent's conduct, particularly that involving Alexis Campbell, constitutes sexual harassment of a school employee

in violation of Title 92, Nebraska Administrative Code, Chapter 27, Sections 004.02F (same effective date.) However, the Commission members feel that this conduct is not a high-grade type of sexual harassment and, therefore, does not warrant a sanction more severe than a public reprimand. The Commission members unanimously feel that the Respondent's conduct in all three incidents is inappropriate and does warrant a public reprimand so that the same will not be repeated in the future.

The Commission members are unanimously of the opinion that the Petitioner failed to prove a violation of the above statute and regulations regarding the October 15, 1999, incident involving Judy Severin. Both Severin and the Respondent gave credible but conflicting versions of the incident. However, since the Petitioner has the burden of proving those allegations by a preponderance of the evidence, the Commission members feel that such burden has not been met.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case and all proceedings have been in accordance with applicable Constitutional, Statutory, and Regulatory Requirements.

2. The Petitioner has proven by a preponderance of evidence that the Respondent sexually harassed Alexis Campbell on October 18, 1999, in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02F (effective date: December 25, 1989) when he touched her hair, put his face near her neck, smelled her hair and asked her if she was one to "kiss and tell," thereby making her feel uncomfortable.

3. The Petitioner has failed to prove by a preponderance of the evidence that any of the Respondent's conduct alleged in the Petition constituted an immoral act, an act of moral turpitude, or the commission of a felony in violation of Section 79-866(2) (Reissue 1996) or Title 92, Nebraska Administrative Code, Chapter 27, Section 004.04E (effective date of December 25, 1989.)

V. ORDER

Therefore, the Commission respectfully orders that Harold Jones be, and he is, hereby issued a public reprimand for his conduct respecting fellow employee Alexis Campbell on October 18, 1999; for his conduct respecting fellow employee Sheri Plumtree in September of 1999, and; his conduct respecting fellow employee Jill Stark in May of 1995.

Dated this 18th day of August, 2000.


Kurt Harrison, Chairperson, Hearing Panel Committee
Nebraska Professional Practices Commission

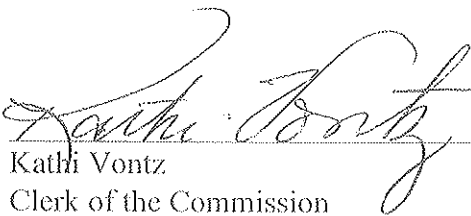
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order of the Commission for Case No. 008 has been served upon Respondent, Harold Jones, by U. S. Mail, postage prepaid, and Scott Norby, attorney for the Respondent by U.S. Mail postage prepaid, and hand delivered to Brian L. Halstead on this 2nd day of August 2000, at the following addresses.

Harold Jones
Respondent
1108 Picotte Street
Yankton, SD 57058

Brian L. Halstead
Attorney for Petitioner
301 Centennial Mall South
Lincoln, NE 68509

Scott Norby
Attorney for Respondent
605 So. 14th St., Suite 100
Lincoln, NE 68508


Kathi Vontz
Clerk of the Commission